

ADVERSARY COMPLAINT PACKET

Instructions:

This packet is to be used by Debtors in the Bankruptcy process who are representing themselves without the assistance of legal counsel. This packet will be helpful to the Debtor when defending against a creditor's/trustee's objection to your discharge or the filing of a Complaint for Nondischargeability based upon fraud/conversion; however, this packet may also assist the Debtor in bringing an adversary proceeding should one be necessary.

Please read and make sure you understand the contents of this packet. The Court will assume you have read and understand your duties and responsibilities in representing yourself which are set forth herein and will enforce the Bankruptcy rules and code provisions in your case.

NOTE: You are strongly encouraged to seek legal counsel to assist you. However, should you determine to represent yourself, use this packet to assist you in your defense. Please be aware that you should seek assistance from opposing counsel regarding procedural questions only. Procedural questions are inquiries not involving the law but rules governing the court process. **It is not the intent of this packet or its preparers to provide legal advice. Rather, you should seek competent legal counsel or perform your own legal research and analysis.**

WHAT TO DO AFTER YOU HAVE BEEN SUED IN AN ADVERSARY PROCEEDING

Introduction

An adversary proceeding is a lawsuit brought within your bankruptcy. This lawsuit normally centers around whether a particular debt or all of your debts are dischargeable (or forgiven) through the act of your filing bankruptcy. These lawsuits usually focus around some alleged improper act on your part, including fraud, misrepresentation, or your failure to abide by the Bankruptcy Code and accompanying Rules.

You are now at the point of the adversary process where you have received, by mail or by personal service, the complaint filed by your creditor which asks the Court to decide whether or not that particular obligation should be part of your bankruptcy discharge or an objection to your overall discharge should be granted.

This section of the adversary proceeding packet is to inform you of what your obligations are in order to prepare for a trial. Note that there are references to the bankruptcy rules: Local Rules of Bankruptcy Practice = LR; Federal Rules of Bankruptcy Procedure = Fed.R.Bankr.P. You may also find both types of Rules at the county law library or you may access the Local Rules at the court's website www.nvb.uscourts.gov. You may also purchase the Local Rules from its publisher at 1-800-833-9844, Option 5. You should take a look at these rules if you have any questions about the information given in this section.

Step 1: Answer

After you receive a complaint, you must file an answer with the clerk of the Bankruptcy Court within 30 days after issuance of the summons. (Fed.R.Bankr.P. 7012) You must provide a copy of that answer to the creditor's attorney.

Step 2: Pre-Trial Conference

Note that the cover sheet you receive from the Court will set forth a pre-trial conference date in the lower right-hand corner of the Summons. You must attend that hearing. At that time, the Court will set parameters for trial. The Court may also discuss with the parties whether or not any settlement is possible. Prior to this pre-trial conference with the Court, and within thirty (30) days after you have answered the complaint, you are required to meet with the attorney for the creditor to discuss how discovery will be conducted in the case. After you have had this discussion and no later than fourteen (14) days after the meeting with the attorney, the parties are required to submit a discovery plan. (Fed.R.Bankr.P. 7016 and LR 7016) This plan is a form which the creditor's counsel will have and will be filled out by both parties. The form will then be submitted to the Court and the Court will then approve, disapprove or modify the discovery plan and enter any other orders that may be appropriate.

Step 3: Discovery

After you have gone through the preparation of the discovery plan and have had it approved by the Court, you will then conduct your discovery. Local Rule 7026 will provide you with information as to what the parties may or may not do during the discovery process. You may also want to look at Local Rules 7026 through and including 7036 and Fed.R.Bankr.P. 7026 through and including 7036 which gives further information regarding some of the discovery tools or requirements.

Step 4: Motions

You may find that throughout the time frame prior to trial that motions are being filed. Motions may be filed by either party. If you are served with a motion in your adversary proceeding, please be advised that you are required to file your opposition or response with the Court and serve your response to the creditor's attorney not more than fifteen (15) days after you have received the motion and, in no event, not later than five (5) business days prior to the date set for the hearing on the motion. (Fed.R.Bankr.P. 9013 and Local Rule 9014) Make sure that you provide counsel with a copy of your response.

When you get to Court, you are basically going to supplement what is in your opposition or your motion so the Court can make a well-informed analysis of the situation and then deliver an appropriate decision. Please note that when you are in front of the Court, your time is limited. Generally, a motion is limited to approximately five minutes for both sides. It is the

feeling of all three judges in our district that if all motions and oppositions are well-drafted and timely filed, there is no reason to spend lengthy periods with oral argument. Therefore, you will be expected to come in to court, make a brief presentation and then sit down.

Step 5: Trial

After you have completed all discovery and all motions, you will then be at the point where the parties are ready to proceed with trial. Your trial date will be assigned to you at the pre-trial conference and the Court will generally schedule the trial within 60 and 120 days depending upon the nature of the matter being tried.

Approximately two weeks prior to the trial, you are required to file with the Court a trial statement, a list of witnesses, and a list of exhibits. You must also exchange these documents with the attorney for the creditor. If you and the attorney for the creditor can agree on what the basic issues in trial are going to be, the trial statement may be filed jointly. In other words, one statement will represent the facts and information for both sides to the Court.

The day before the trial, the parties will mark all the exhibits and any supplemental information that needs to be added to the trial statements. Although you are not required to agree with the attorney for the creditor as to what exhibits may be introduced into evidence, it is strongly encouraged that the parties try to agree to all exhibits to be placed before the Court in an effort to have an economical and efficient adjudication of the case.

Certain documents have been included in this packet so that you will have the ability to understand what needs to be filed with the Court prior to trial. However, it is strongly recommended that you access the court's website at www.nvb.uscourts.gov and download a copy of the Local Rules or contact the publisher of the Local Rules at 1-800-833-9844, Option 5 and purchase a copy of those rules. These will prove very useful to you through the course of the adversary proceeding. You may also wish to check with the county law library for a copy of the Local Rules.

All three bankruptcy judges are willing to set up a time to discuss whether or not the case may be settled. Many times, having an impartial third party listening to the problems will allow negotiations to flow freely and hopefully obviate the need for the trial. If a settlement conference is set up, it will not be the judge in front of whom this matter will be heard, so you need not fear that you will be prejudiced in any way if this matter is not settled.

COURTROOM ETIQUETTE BETWEEN THE COURT AND THE PARTIES

1. Don't take the argument personally (no personal slurs against the other party.)
2. Advocacy does not mean we cannot be civil and communicate with the other side.
3. Adversary proceedings are intended to be negotiated if possible.
4. If you cannot resolve the matter and proceed to trial, remember the following:

- a. Dress Appropriately - Nice attire such as a suit or slacks is acceptable. Please no hats, shorts, thongs, tank tops, etc.
- b. Your statements should be addressed to the court and not the other side - The only time you should speak to opposing counsel is during breaks or with the Court's permission after requesting a break.
- c. Do not interrupt the other side or the judge when they are speaking.
- d. Remember to follow the rules as explained in the attached documents regarding the filing of your trial statement, list of exhibits, witnesses, etc.

DEALING WITH THE LAW

- 1. Understand your responsibilities and respond accordingly. You are held to the same standard as an attorney when presenting your case and arguing the legal issues. You may need to educate yourself on the law at issue by visiting the law library and reading the Bankruptcy Code and cases dealing with those sections of the code involving your case.
- 2. **Sanctions** - Remember that if you act disrespectful to the Court or opposing attorney, or if you lie in your court pleadings or under oath at trial, the Court has the power to sanction you by either assessing a fee or ruling for the opposing party.
- 3. If you have any questions regarding your responsibilities, call the other side's attorney-- they will answer procedural questions, but cannot assist you with your legal argument.
- 4. Know the Local Rules - you can obtain a copy by accessing the court's website at www.nvb.uscourts.gov or the publisher at 1-800-833-9844, Option 5. You may also be able to obtain the rules from the county law library or from opposing counsel.